



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2018-0920]**

**RIN 1625-AA00**

### **Safety Zone; Cape Fear River, Wilmington, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

---

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the Cape Fear River to minimize risks caused by vessels transiting near vessels and divers conducting post-Hurricane Florence recovery operations. Entry of vessels or persons into this zone is prohibited unless a vessel meets the stated requirements or is specifically authorized by the Captain of the Port North Carolina (COTP).

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through October 17, 2018. For the purposes of enforcement, actual notice will be used from September 26, 2018, through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2018-0920 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Chief Petty Officer Joshua O’Rourke, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone 910–772–2227, email: joshua.p.orourke@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

COTP	Captain of the Port
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

After Hurricane Florence passed over the Cape Fear River, the National Oceanic and Atmospheric Administration and U. S. Army Corps of Engineers conducted surveys of the navigable channel to identify obstructions that may have collected on the river bottom and pose risks to shipping traffic. The surveys identified a number of potential obstructions that require further investigation and possible removal. Operations are scheduled to begin on September 26, 2018. These operations involve diving in murky water with strong currents, using heavy-lift equipment on floating platforms, and other inherently risky activities that require strict safety procedures. Vessels that pass too close or too quickly increase the risk of these operations. To mitigate such risks, the COTP is establishing a safety zone around the vessels conducting diving and salvage operations. This safety zone will move with the vessels as they transit the river to investigate and remove obstructions.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be impracticable and contrary to the public interest. Waiting to return the waterway to conditions that accommodate the safe, full resumption of commercial shipping is contrary to the public interest. It is impracticable to publish an NPRM because recovery assets will be on scene on or about September 26, 2018, and the safety zone needs to be in place at that time to protect vessels and persons in the vicinity of salvage operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest. Immediate action is needed to protect vessels and persons conducting diving and salvage operations, as well as vessels transiting nearby, from the potential hazards associated with these operations.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port North Carolina (COTP) has determined that potential hazards associated with salvage operations starting on or about September 26, 2018, will be a

safety concern when anyone approaches within 100 yards of salvage vessels and divers. This rule is needed to protect personnel and vessels in the navigable waters within and transiting near the safety zone.

#### **IV. Discussion of the Rule**

This rule establishes a moving safety zone that protects vessels and affiliated divers engaged in post-Hurricane Florence salvage operations on the navigable waters of the Cape Fear River. The safety zone includes all navigable waters within 100 yards of vessels actively engaged in salvage and dive support vessels being used to conduct salvage operations on the Cape Fear River. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Vessels requesting to enter or transit the safety zone may contact the Sector North Carolina Command Center via VHF-FM channel 16 or telephone at 910-362-4015.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has

not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and flexibility of the safety zone. Because of its size, vessels will typically be able to safely transit around the zone. In cases where the location of salvage operations don't allow safe passage without transiting through the zone, the regulation is written to give the opportunity for transiting through after coordinating with salvage operators and the COTP. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone updating mariners of the location of current salvage operations.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule.

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have

a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that is active only during salvage operations that will prohibit entry within 100 yards of salvage vessels, machinery, and divers being used to investigate and remove obstructions from the Cape Fear River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting

this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0920 to read as follows:

**§ 165.T05-0920 Safety Zone, Cape Fear River, Wilmington, NC.**

(a) Location. The following area is a safety zone: All navigable waters of the Cape Fear River, from surface to bottom, within 100 yards of:

- (1) Any salvage vessel exhibiting visual signals for vessels restricted in ability to maneuver in accordance with 33 CFR 83.27(b); and
- (2) Any diving vessel exhibiting visual signals for vessels engaged in diving



operations in accordance with 33 CFR 83.27(e).

(b) Definitions. As used in this section --

Captain of the Port means the Commander, Sector North Carolina.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or designated representative.

(2) To seek permission to enter, contact the COTP or designated representative via VHF-FM channel 16 or telephone at 910-362-4015 and comply with all lawful orders or directions given.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement periods. This section will be enforced any time salvage vessels are exhibiting visual signals for vessels restricted in ability to maneuver in accordance with 33 CFR 83.27(b) or any time diving vessels are exhibiting visual signals for vessels engaged in diving operations in accordance with 33 CFR 83.27(e). The exact timeframe that will be required to complete diving and salvage operations is unknown, but the Coast Guard estimates that it may take 21 days from beginning of salvage operations until the channel is returned to pre-Hurricane Florence conditions.

Dated: September 26, 2018.

Bion B. Stewart,  
Captain, U.S. Coast Guard,  
Captain of the Port North Carolina.  
[FR Doc. 2018-21276 Filed: 9/28/2018 8:45 am; Publication Date: 10/1/2018]